

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Anniston and Ashland, Alabama,)
College Park, Covington and)
Milledgeville, Georgia))

MM Docket No. 98-112
RM-9027
RM-9268

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

COMMENTS OF COX RADIO, INC.

Cox Radio, Inc. ("Cox"),^{1/} by its attorneys, hereby submits these comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") in the above-captioned proceeding. Cox opposes the petition of WNNX License Investment Co. ("WHMA"), licensee of WHMA(FM), Channel 263C, Anniston, Alabama ("College Park Proposal"), to substitute Channel 263C3 for Channel 263C at Anniston, to reallocate Channel 263C3 to College Park, Georgia, and to modify its license accordingly. As shown herein, the public interest would not be served by removing WHMA from Anniston in favor of the well-served Atlanta radio market.

The Commission should grant the mutually exclusive application of Preston W. Small ("WLRR"), licensee of WLRR(FM), Channel 264A, Milledgeville, Georgia (the "Covington Proposal"), because the channel substitution and reallocation proposed therein would provide a second local aural and first competitive transmission service to the underserved community of Covington, Georgia.

^{1/} Cox is the licensee of three radio stations in the Atlanta radio metro market.

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Summary

The Commission has a very clear choice before it in this proceeding. On the one hand, it could grant the Covington Proposal and allot the first FM, first local full-time and first competitive service to a deserving community located about thirty-five miles southeast of Atlanta. This proposal also would result in a significant service gain, as well as the tangible public interest benefits that accompany the provision of a competitive service. A grant of the Covington Proposal also would require the retention of the present arrangement of allotments for Anniston and Ashland, Alabama, and College Park, Georgia, and thus ensure the continued service of a high-powered Anniston FM radio station upon which the residents of the Anniston area have come to depend.

Alternatively, the Commission could grant the College Park Proposal. This action would provide minimal public interest benefits, because the entire gain area that would result from a relocation of WHMA from Anniston to College Park already is well-served by numerous radio stations. Indeed, the individuals served by the proposed city grade contour almost all reside within the Atlanta Urbanized Area. For its part, the proposed community of license, which adjoins the City of Atlanta and is located within Atlanta's "beltway," is indistinguishable from the urbanized area. Moreover, a grant of the College Park proposal would necessitate a loss of service for over six hundred thousand individuals in and around Anniston.

Faced with such a distinct choice, the Commission's public interest responsibilities clearly require it to grant the Covington Proposal and deny the mutually exclusive College Park Proposal. Only by such action can the Commission fulfill its statutory obligation to ensure the fair, efficient and equitable distribution of radio signals to communities throughout the United States.

Introduction

The instant proceeding began not with the filing of WLRR's petition for rule making almost two years ago, but with the filing of a counterproposal in MM Docket No. 89-585 by WHMA's prior licensee. That counterproposal, like WHMA's current proposal, sought Commission approval of WHMA's abandonment of Anniston, its community of license, in favor of Sandy Springs, Georgia, a bedroom community adjacent to the city of Atlanta. In denying WHMA's counterproposal in 1991, the Commission found that the proposed community of license did not qualify as a community independent from its significantly larger neighbor and, in any event, the proposed reallocation would undermine Anniston's legitimate expectation of continued service from local broadcast stations.^{2/} WHMA's two challenges to this decision finally ended earlier this year when the Commission dismissed WHMA's second application for review.^{3/}

Almost one year after WLRR submitted its petition for rule making (which was mutually exclusive with WHMA's proposed Sandy Springs allotment), and six months after the FCC denied WHMA's first application for review, WHMA came forward with the instant proposal to move the station from Anniston to College Park, Georgia.^{4/} Because College Park is dependent

^{2/} *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6580 (1991), *appl. for rev. dismissed*, 12 FCC Rcd 8392 (1997), *appl. for rev. dismissed*, 13 FCC Rcd 2104 (1998). WHMA argued in that case that the FCC should grant its counterproposal because "the current far-reaching Class C signal of WHMA is largely wasted from a listenership standpoint," because the station was unable to obtain acceptable ratings in the four Birmingham metropolitan area counties toward the outer edge of its service area. *Id.* at ¶ 31.

^{3/} *Eatonton*, 13 FCC Rcd 2104 (1998).

^{4/} This proposal also would permit the allotment of Channel 261C3 to Anniston and Channel 264A to Ashland, Alabama. *NPRM* at ¶ 1.

on the Atlanta Urbanized Area, and because the proposal would cause an unacceptable loss of service, WHMA's current proposal disserves the public interest. Moreover, a comparison of Covington to College Park indicates that the public interest would be better served by the allotment of the first competitive transmission service to Covington rather than the allotment of an additional aural service to the abundantly well-served Atlanta/College Park radio market.

I. College Park Does Not Deserve a First Local Service Preference.

The Commission resolves proposals to change a station's community of license based upon a comparison of the proposed allotment plan and the existing state of allotments for the communities involved.^{5/} Only if the proposal would result in a preferential arrangement of allotments would the proposal be granted. Further, to determine whether a proposal would result in a preferential arrangement of allotments, the Commission is guided by the FM allotment priorities.^{6/} Anniston has five radio stations licensed to it, whereas an allotment to College Park would trigger the third allotment priority, first local service.^{7/}

In *Community of License MO&O*, the Commission observed that the "inflexible application [of the first local service] preference, without further analysis, could consistently result in our finding that a reallocation leading to first local service for a suburb of a much larger

^{5/} *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990).

^{6/} *Id.* The FM priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to priorities (2) and (3). *Revision of FM Assignment Policies and Procedures ("FM Priorities")*, 90 FCC 2d 88 (1982).

^{7/} *NPRM* at ¶ 4.

adjacent metropolitan center justifies removing a local service from a more remote community."^{8/} Consequently, and as required by Section 307(b) of the Communications Act, the FCC has "consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission's 307(b) related policies."^{9/}

In this case, WHMA has requested authority to relocate WHMA, Anniston's sole local commercial FM station, to College Park, Georgia. The proposal to relocate the station from the smaller community of Anniston (population 26,623, with five aural services) in favor of College Park is akin to a request to move a radio station from Morgantown, West Virginia (population 25,879, with six aural services) to Chevy Chase, Maryland: both College Park and Chevy Chase lie within their respective urbanized areas, are engulfed by the local "beltway," and share a common border with their larger neighbor.^{10/} Moreover, because both are located just a few miles from their neighboring city's downtown area, thousands of commuters pass through these communities each day on their way to work, shopping and entertainment in the downtown area. As a result, listeners, advertisers and even radio industry professionals would be hard pressed to identify any distinction between a radio station licensed to serve College Park (or Chevy Chase) and those stations licensed to serve Atlanta (or Washington).

^{8/} 5 FCC Rcd at ¶ 13.

^{9/} *Id.* at ¶ 14. See also *New South Broadcasting Corporation v. FCC*, 879 F.2d 867, 870 (DC Cir. 1989) (observing that one "danger" of "granting a preference to the applicant who proposes to serve [a] community without an existing radio station . . . is that broadcasters will exploit the Commission's rules by specifying a small unserved community as the city of license, while in reality serving a much larger adjacent community") (citations omitted).

^{10/} See *Exhibit B* (maps of Atlanta area, including route map for the Metropolitan Atlanta Regional Transportation Authority ("MARTA")); see also discussion *supra*.

In order to decide whether a proposal to serve a suburban community located within an urbanized area, such as College Park, should receive a first local service preference, the Commission is guided by the following three factors: (1) signal population coverage, that is, the degree to which the proposed station is capable of providing service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis, as gauged by a number of indicia.^{11/} All three factors indicate that College Park should not be awarded a first local service preference.

First, the proposed College Park allotment would enable WHMA to provide a city grade signal to 48.1 percent of the Atlanta Urbanized Area, and a high-quality 60 dBu signal to 81.0 percent of the urbanized region.^{12/} Significantly, 98.7% of the proposed WHMA city grade signal would provide service to residents who reside within the Atlanta Urbanized Area.^{13/}

^{11/} *Eatonton*, 6 FCC Rcd at ¶ 20, citing *Change of Community M&O*, 5 FCC Rcd at n. 14. See also *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951). The Commission applies the *Tuck/KFRC* analysis whenever a proponent specifies a community of license that *either* (1) is located *within* an Urbanized Area, *see, e.g., Tuck*, 3 FCC Rcd at ¶ 48, *or* (2) is located *outside* an urbanized area *but* the proposed facility would place a city grade signal over fifty percent or more of that urbanized area, *see, e.g., Littlefield, Wolfforth and Tahoka, Texas*, 12 FCC Rcd 3215, ¶ 4 (1997) ("Our new policy requires that proponents seeking to relocate to a community *adjacent to an urbanized area* that would place a 70 dBu signal over 50% or more of the urbanized area must submit a *Tuck* analysis") (emphasis supplied). Consequently, the Commission in this case must apply a *Tuck/KFRC* analysis because College Park lies within the Atlanta Urbanized Area. Despite WHMA's misreading of the law, *see NPRM* at ¶ 6, the fact the proposed 70 dBu signal would cover slightly less than fifty percent of the Atlanta Urbanized Area does not permit WHMA to escape this inquiry.

^{12/} *Exhibit A* (Cox Engineering Statement).

^{13/} *Id.*

These figures indicate that the College Park Proposal, in fact, is nothing more than another example of WHMA's attempt to become an Atlanta station.

Second, the proximity of College Park to Atlanta and a comparison of population figures confirm that the former is indistinguishable from the latter. College Park's western boundary is *adjacent to* the City of Atlanta's Hartsfield Atlanta International Airport, one of the nation's busiest airports and the state's largest employer.^{14/} In fact, annually, tens of millions of travelers (and workers) pass through College Park on their commutes to Hartsfield via Interstates 85 and 285 and MARTA, the region's mass transportation system.^{15/} Moreover, College Park's 1990 population of 20,457 represents just five percent of the size of Atlanta, which recorded 394,017 persons in the most recent census. College Park, therefore, is not unlike the communities of Richmond, California, and Sandy Springs, Georgia, for which the Commission denied a first local service preference based in part on their close proximity and much smaller sizes relative to their larger neighbor.^{16/}

Third and most importantly, the suburban community of College Park is interdependent with the Atlanta Urbanized Area. Guidance in this area comes from *RKO General (KFRC)*, in which the Commission first applied the interdependence factors enunciated in *Tuck* to a case

^{14/} *Exhibit C* (Hartsfield Atlanta International Airport Press Kit and selected pages from Hartsfield's Internet web site (<http://www.airport-atlanta.com>) ("Hartsfield Material")). *But see Notice* at ¶ 6 (WHMA represents that "College Park is not contiguous with Atlanta").

^{15/} *Exhibit B* (maps of area, including MARTA route map); *Exhibit C* (Hartsfield Material). The airport, with an official abbreviation of "ATL," is owned, operated and located on land owned by the City of Atlanta. *Id.* Consequently, WHMA blinks reality when it represents that the airport -- the state's largest source of employment -- is a College Park employer. *See Notice* at ¶ 7.

^{16/} *RKO General Inc. (KFRC)*, 5 FCC at ¶ 20; *Eatonton*, 6 FCC Rcd at ¶ 24.

involving FM allotments.^{17/} In *KFRC*, applicants in a comparative renewal proceeding proposed the community of Richmond, California, in their mutually exclusive application. Richmond, located 26.7 kilometers (16 miles) outside of San Francisco but within the San Francisco-Oakland Urbanized Area,^{18/} boasted a local government that provided a "full complement of municipal services," an elected council-city manager form of government, and an annual budget of over \$117 million. The FCC took notice of the fact that Richmond had a full complement of commercial establishments. Nonetheless, one-third of the Richmond work force traveled to San Francisco, while only one-third worked within Richmond. Moreover, Richmond lacked its own public transportation services, newspaper, public hospital, and telephone directory. Finally, the FCC noted that Richmond was served by the twenty-five radio stations licensed to San Francisco as well as others licensed to other nearby communities and was included in the San Francisco radio market. Despite the existence of some persuasive factors of independence (noting especially the presence of a local government and range of municipal services), the Commission concluded that Richmond was too interdependent with the urbanized area to warrant a first local service preference.^{19/}

The College Park Proposal presents an even less compelling case than that before the Commission in *KFRC*. College Park, which adjoins Atlanta along its eastern edge, is located

^{17/} 5 FCC at ¶ 20.

^{18/} For comparison, the community of Reston, Virginia, is located about the same distance from Washington, D.C. See *Elijah Broadcasting Corp.*, 5 FCC Rcd 5350, ¶¶ 16, 17, 20 (1990) (noting that a proposed Reston allotment raised similar concerns about independence as those discussed in *KFRC*; case remanded to determine if proposed facility, through a facilities change, would be able to cover more than "a small corner of Washington, D.C.>").

^{19/} *KFRC*, 5 FCC Rcd at ¶ 20.

entirely within the Atlanta Urbanized Area.^{20/} Among the local businesses, civic organizations and golf course, only a few apparently use "College Park" in their names. Finally, College Park has twenty-seven hotels and motels and a convention center.

KFRC, Eatonton and similar cases teach that "the mere fact that there are some economic, political, and cultural organizations that identify themselves" with a particular community does not establish that the community "is sufficiently independent from [the larger community] to warrant the grant of a first local service preference."^{21/} Such is the case here.

Governing College Park apparently is a part-time job, because the mayor and council members have outside occupations and draw salaries of less than \$800 per month.^{22/} The Fifth Congressional District encompasses the City of Atlanta as well as College Park, and the U.S. Representative for that area maintains an Atlanta rather than a College Park office to serve her constituents.^{23/} Moreover, the hotel, convention center and interrelated businesses in College Park do not serve the 20,000 residents of College Park, but the millions of annual travelers who pass through College Park on their way to Hartsfield Atlanta International Airport.^{24/} In fact, to

^{20/} *Exhibit B* (Rand McNally map depicting Atlanta Urbanized Area).

^{21/} *Eatonton*, 6 FCC Rcd at ¶ 26. For example, in the Washington area, one would expect to find a number of businesses, organizations and even individuals who identify with the neighborhood of, for example, Chevy Chase, Maryland, and some businesses, rotary clubs and the like may even make the community's name part of their own. Such a neighborhood may well qualify as a community for allotment purposes. WHMA, however, mistakenly assumes that the analysis under *Tuck/KFRC* ends with this determination.

^{22/} Telephone conversation on August 28, 1998, between College Park personnel assistant and a representative of Cox's counsel.

^{23/} *Exhibit D* (1998 Congressional Directory at 60, 62; HPI State Legislative Info system Internet web site at <<http://www.com/hpi/galeg/gasL051.LTM/>>).

^{24/} *Exhibit C* (Hartsfield Material, identifying these hotels as "Airport Area Hotels").

further attract Hartsfield's travelers to their businesses, many College Park hotels actually include "Atlanta" rather than "College Park" in their name.^{25/}

An analysis of additional *Tuck/KFRC* criteria confirm that College Park and the Atlanta Urbanized Area are interdependent. The town utilizes an Atlanta rather than a College Park post office,^{26/} and over eighty percent of its workforce travels outside of the town for employment.^{27/} In addition, College Park does not have its own newspaper.^{28/} As a result, Atlanta papers enjoy significant penetration in the town and -- contrary to WHMA's representation to the contrary^{29/} -- College Park businesses reach the residents of their hometown by advertising in Atlanta newspapers.^{30/} The Atlanta radio market, like the Atlanta newspaper market, encompasses College Park;^{31/} indeed, College Park itself already receives twenty eight radio signals.^{32/}

^{25/} *Exhibit D* (Accommodation and Meeting Facilities for Atlanta Airport & South, prepared by the Atlanta Convention and Visitors Bureau).

^{26/} *Exhibit D* (List of 5th Congressional District ZIP codes, which does not identify any such code for College Park); *Exhibit E* (1998 *Commercial Atlas and Marketing Guide*, Rand McNally ("*Commercial Atlas*") at 301).

^{27/} *Exhibit D* (1990 *Census of Population: Social and Economic Characteristics-Georgia, Section 2*, at 807).

^{28/} *NPRM* at ¶ 7.

^{29/} *See Exhibit D* (*SRDS Circulation* 98 at 270-72).

^{30/} *Exhibit F* (collection of advertisements from businesses listing a College Park address from recent editions of the *Atlanta Journal-Constitution*).

^{31/} *Exhibit D* ("Atlanta, GA Market Overview," *Investing in Radio* 1998, 1st Edition).

^{32/} *Exhibit A* (Cox Engineering Statement).

Moreover, College Park does not have a hospital within its borders, so its residents travel to Atlanta or other communities to seek medical attention in case of an emergency.^{33/} The town does not have its own public transportation system; instead, like Richmond and Sandy Springs, the town relies on regional bus and rail lines.^{34/} Also like Richmond, College Park does not have its own telephone directory.^{35/} College Park residents also must leave their hometown to find a shopping mall or new car dealership.^{36/} Finally, its residents are subject to the metro Atlanta vehicle emission inspection program.^{37/} In light of all of these factors, it is no surprise that Rand McNally does not denote College Park as a "principal business center," which is defined by the company as "a city of major economic importance."^{38/}

In summary, although College Park exhibits some characteristics that would support a claim of independence, the complete record indicates that the town is closely interdependent with the Atlanta Urbanized Area. As noted, it has no post office, hospital, newspaper, telephone

^{33/} *Exhibit E (Commercial Atlas at 301).*

^{34/} *Exhibit B (MARTA route map).* MARTA's rail line includes a stop in College Park, as do eight MARTA bus lines. Incidentally, the commute on MARTA's rail line between downtown Atlanta and College Park (eight minutes) is slightly shorter than the commute between downtown and Atlanta's airport (nine minutes). *Id.*

^{35/} *NPRM*, at ¶ 8.

^{36/} *Exhibit G (Bell South telephone directory); Exhibit F (Atlanta Journal-Constitution, August 20, 1998 at F12).*

^{37/} *Exhibit G (Bell South telephone directory regarding Georgia's Clean Air Force).*

^{38/} *See Fairfield and Norwood, Ohio*, 7 FCC Rcd 2377 (1992) (noting same determination about Norwood, Ohio, in concluding that Norwood was dependent on the Cincinnati Urbanized Area). Significantly, the only "Ranally Metro Areas" ("developed areas around each important city") in Georgia that do not qualify as a principal business center are College Park and North Atlanta. *See Exhibit E (Commercial Atlas at 87, 97).*

directory, or local media distinct from Atlanta. Furthermore, given the expansive coverage of the proposed WHMA signal over the urbanized area and College Park's size and proximity to Atlanta, College Park does not warrant a preference for first local service under the Commission's precedents. Consequently, the Commission must attribute all of the services of the Atlanta Urbanized Area to the community of College Park and consider this proposal pursuant to the fourth FM allotment priority, "other public interest matters."

II. Retaining the Current Allotment Scheme Would Better Serve the Public Interest than Adopting the Changes Proposed by WHMA.

In comparing the College Park Proposal (*i.e.*, a Class C3 allotment at Anniston, a Class A allotment at Ashland, and a Class C3 allotment to College Park) against the retention of the current arrangement of allotments (*i.e.*, a Class C allotment at Anniston), the Commission must evaluate "the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities and their growth rate."^{39/} Under that analysis, the College Park Proposal would not result in a preferential arrangement of allotments.

A. The Purported Public Interest Benefits of the College Park Proposal Are Minimal at Best.

The addition of one more signal to the abundantly well-served Atlanta Urbanized Area would yield marginal public interest benefits. The proposed Class C3 College Park facility would provide 60 dBu service to approximately two million people, while the current Class C Anniston station serves 658,920 persons with a 60 dBu signal; thus, a service gain of roughly

^{39/} *FM Priorities*, 90 FCC 2d at n.8.

one and one-half million people would result.^{40/} In addition, the proposed College Park allotment would provide the residents of that town with their twenty-ninth aural service.^{41/}

Nonetheless, the public interest harms that would result from adopting the College Park Proposal overwhelm those marginal public interest benefits. The provision of an additional station in the Atlanta radio market would provide only a marginal increase in diversity, competition or listener choices. In contrast, retaining the current arrangement of allotments would preserve a high-powered competitive station in a market with many fewer alternatives for listeners and advertisers. In fact, Anniston residents currently receive just eleven radio stations. As such, Anniston would benefit more from retaining its Class C allotment than College Park (and the Atlanta Urbanized Area) would benefit from a marginal increase in the number of radio stations they receive. On the whole, a grant of the College Park Proposal would yield marginal public interest benefits at best.

B. The Resulting Loss of Service to over 650,000 Persons Completely Negates Any Public Interest Benefits That Might Result from a Grant of the College Park Proposal.

The enormous service disruptions that would result from adopting the College Park Proposal are far greater than the proposal's minimal public interest gains. The Commission has often warned petitioners that "the public has a legitimate expectation that existing service will continue."^{42/} Nevertheless, WHMA proposes changes that would necessitate a loss of service for the 658,920 individuals who currently receive the station within an 18,146 square kilometer

^{40/} *Exhibit A* (Cox Engineering Statement).

^{41/} *Id.*

^{42/} *Change of Community MO&O*, 5 FCC Rcd at ¶ 19.

area.^{43/} Even more troubling is the fact that, as WHMA concedes, over forty percent of those who reside in a loss area -- or 279,852 individuals -- would be underserved by radio stations, while 696 persons would find themselves in a "gray area."^{44/} In contrast, as WHMA also concedes, the *entire gain area already is well served*.^{45/} The tremendous losses and their disproportionate effect on individuals who do not enjoy the abundant services available elsewhere in the country (including College Park) clearly outweigh the gains that would result from a grant of the College Park Proposal.^{46/}

In its petition for rule making, WHMA attempts to deflect the Commission's focus from the almost 660,000 person-loss area by erroneously arguing that it should receive credit for the approximately 220,000 persons who would receive service from the resulting two new allocations in the Anniston market.^{47/} These gains, however, cannot be used to mask the

^{43/} NPRM at ¶ 9.

^{44/} NPRM at ¶ 10. The Commission recently explained: "A 'white' area receives no full-time aural service, [while] a 'gray' area receives one full-time aural service. We note that case law suggests that the Commission is precluded from allowing the creation of any white or gray areas." *1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rule Making and Order* in MM Docket No. 98-93, 1998 FCC LEXIS 2918 (rel. June 15, 1998), citing *West Michigan Television v. FCC*, 460 F.2d 883 (D.C. Cir. 1971). An underserved area is one that receives fewer than five full-time aural services. See, e.g., *Bay City, Brenham, Cameron, Centerville, Edna, Ganado, Giddings, Harker Heights, Hearne, LaGrange, Matagorda, New Ulm, Point Comfort, Rollingwood, Rosenberg, and Seadrift, Texas*, 10 FCC Rcd 3337, ¶ 5 (1995).

^{45/} NPRM at ¶ 10.

^{46/} See, e.g. *Harrisburg and Albemarle, North Carolina*, 11 FCC Rcd 2511, ¶ 18 (1996) (affirming the denial of a proposal that would eliminate two short-spacings and expand service areas of three stations because the "counterproposal incorporated the fatal flaw of unacceptable losses in the Albemarle reception area if Station WABZ-FM were relocated").

^{47/} NPRM at ¶ 9.

affirmative injuries resulting from WHMA's abandonment of Anniston. Even assuming the quick assignment, application, authorization and construction of these stations, a significant period of time -- perhaps several years -- would still elapse between the time that WHMA abandoned Anniston for the Atlanta market and the provision of new service on the replacement channels. In fact, the Commission foresaw this exact situation in *Community of License MO&O* and observed:

We specifically wish to clarify that replacement of an operating station with a vacant allotment or unconstructed permit, although a factor to be considered in favor of the proposal, does not adequately cure the disruption to existing service occasioned by removal of an operating station. From the public's perspective, the *potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set.*^{48/}

Indeed, the Commission has even refused to consider the benefit of a replacement channel where the abandoning station was off-the-air and, therefore, not providing service to its community.^{49/} The public, it concluded, was entitled to expect the resumption of service by the dark station at an earlier date "than by a new station which must first go through the administrative processes to receive a construction permit and then the actual construction of a new station."^{50/} Consequently, the proper focus of the loss analysis here is on the 658,920 persons who would lose service when WHMA turns off its transmitter rather than the 440,174

^{48/} 5 FCC Rcd at ¶ 19 (emphasis added).

^{49/} *Klamath Falls, Altamont and Butte Falls, Oregon, and Dorris, California*, 10 FCC Rcd 7583, ¶ 14 (1995).

^{50/} *Id.* In the instant case, the public's legitimate expectation would be harmed even further because WHMA currently is operating and providing service.

individuals who would lose WHMA's service *and* still not receive service from a replacement channel at some uncertain date in the future.

In any event, even if the Commission were to credit the College Park proposal with the gain that would result from the "poor substitute" of the new allocations, the resulting "net loss" figure of 440,174 persons is equally fatal. Indeed, the Commission need look no farther than its resolution of WHMA's Sandy Springs counterproposal in *Eatonton*. That proposal would have resulted in the loss of service for "approximately four hundred thousand individuals, over a widely spread geographic area," assuming that service from the proposed two new allotments "would commence simultaneously or nearly simultaneously with the cessation of Class C operations from Anniston." The decision concluded:

These individuals would be precisely the type of persons the Commission expressed concern about in [*Change of Community MO&O*], since the net result of any action granting [WHMA's] proposal would be that a substantial population, with a legitimate expectation of continued service, would suddenly find that they no longer have access to "the signal of an operating station that can be accessed today simply by turning on a . . . radio set."^{51/}

A grant of the College Park proposal, just like the Sandy Springs counterproposal, would fail to offer "approximately 400,000 individuals ... the 'poor substitute' of a vacant allotment capable of providing service at some future date. This population is substantial, in both absolute numbers and relative to the proposed gains."^{52/}

Similarly, in *Ravenswood and Williamstown, West Virginia*, the Commission held that a gain of 98,548 persons could not justify the loss of service to 37,207 persons that would result

^{51/} *Eatonton* at ¶ 35, quoting *Change of Community MO&O*, 5 FCC Rcd at ¶ 19.

^{52/} *Id.*

from a change in community of license.^{53/} The Commission in that case also was troubled by the fact that the purported gains in service would occur primarily in well-served areas, while "the area that would lose Station WRZZ's signal receives fewer signals overall." The disruption in service led the Commission to conclude that the public interest did not support a grant of the proposal, even though the licensee in that case proposed to provide first local service to its selected community. Because the disruption in service proposed by WHMA is far greater than that at issue in *Ravenswood*, the Commission in this proceeding similarly should conclude that the harm to the public interest outweighs the purported gains.^{54/}

In summary, the Commission is confronted in this case with a proposal that would permit a high-powered, competitive station in Anniston, Alabama, to abandon its community of license in favor of the already well-served Atlanta radio market. The new College Park facility would provide the twenty-ninth radio station to a town dependent on the Atlanta Urbanized Area. The proposal also would abuse the public's reasonable expectation of continued service by creating service disruptions for 658,920 people within a very wide area. On balance, the Commission must deny the College Park Proposal because the public interest would be better served by retaining the present arrangement of allotments.

^{53/} 7 FCC Rcd 5116, ¶ 14 (1992).

^{54/} See *Bay City, Texas*, 10 FCC Rcd at ¶ 5 (affirming denial of proposal; resulting loss of service to community outweighed the benefit of new allotment to town that already received a significantly greater number of services); *Brunswick and Waycross, Georgia*, 8 FCC Rcd 17, ¶ 10 (1992) (denying requested change of community due to the service disruption that would result from removal of the transmission service at Waycross, even though the change would *not* result in any gain or loss of service).

III. The Covington Proposal Would Better Serve the Public Interest Than the College Park Proposal.

Even if the Commission credits College Park with a first local service preference and determines that College Park, with its numerous reception services, is more deserving of an allotment than Anniston, the public interest requires the Commission to select the Covington Proposal instead of the College Park Proposal.

A. The Commission Should Award Covington a First Local FM and a First Competitive Service.

The community of Covington, with a 1990 population of 10,026, is the county seat of Newton County. It is located about fifty-five kilometers (thirty-five miles) east of Atlanta and, significantly, Covington lies outside the Atlanta Urbanized Area.^{55/} A mayor and city council manage Covington's local government and its 270 full-time employees. Over one hundred physicians have privileges at Newton General Hospital, which is located in Covington.^{56/} The city also has its own newspaper (the *Covington News*), radio station (WGFS(AM)), and cable system.^{57/} Consequently, Covington qualifies as a community for allotment purposes.^{58/}

The upgrade and reallocation of WLRR from Milledgeville to Covington would provide the first local FM, first full-time, and first competitive service to Covington.^{59/} In addition, a

^{55/} *Exhibit B* (Rand McNally map depicting Atlanta Urbanized Area).

^{56/} *Exhibit H* (Newton Covington Chamber of Commerce at <<http://www.citybreeze.com/newtoncc/>>).

^{57/} *Id.*

^{58/} *See, e.g., Greenfield and Del Ray Oaks, California*, 11 FCC Rcd 12681, ¶ 8 (1996) (concluding that an incorporated city with elected officials, businesses, a church, and a Moose Lodge, qualifies as a community for allotment purposes).

^{59/} *NPRM* at ¶ 3.

grant of the Covington Proposal would result in a service gain of roughly 120,000 persons.^{60/} The Commission has concluded in a number of cases that service gains comparable (and even less than) those present here advance the public interest.^{61/} Similarly, the Commission also has recognized the importance of allotting a first competitive service to a community, and, in fact, has held that the provision of such service can outweigh the benefit that would result from allotting a first local transmission service to another community.^{62/}

Furthermore, a grant of the Covington Proposal would not deprive Milledgeville of its sole local transmission service. To the contrary, Milledgeville already boasts two local AM stations and two local FM stations, in addition to WLRR.^{63/} Accordingly, a grant of the Covington Proposal would result in a preferential arrangement of allotments by providing a competitive local service to Covington and a service gain of approximately 120,000 persons.

B. The Public Interest Would Be Advanced Further by Allotting a New Channel to Covington Rather than College Park.

As noted previously, the Commission evaluates competing proposals under the fourth allotment criteria on the basis of the number of aural services received in the communities, the

^{60/} *Exhibit A* (Cox Engineering Statement).

^{61/} *See, e.g., Latta, Marion, Camden and Blythewood, South Carolina*, 10 FCC Rcd 7204, ¶¶ 3-4 (1995).

^{62/} *See, e.g., Jefferson City, Cumberland Gap, Elizabethton, Tennessee, and Jonesville, Virginia*, 13 FCC Rcd 2303, ¶14 (1998) ("The fact that the overall Govan & Cagle proposal would have served 7,321 more persons in an area already receiving abundant service is not sufficient to overcome the *loss of a competitive service* in Jefferson City and the expectation that this service will continue") (emphasis added).

^{63/} *NPRM* at ¶ 3.

relative needs for additional service and the population difference.^{64/} In the instant case, the public interest benefits that would accrue to Covington greatly outweigh the marginal gains that would result from a grant of the College Park Proposal. Moreover, the differences between the two communities in this case are so significant that the Commission should evaluate these public interest concerns regardless of how it resolves the *Tuck/KFRC* analysis of College Park.

Notwithstanding some marginal public interest benefits, the College Park Proposal is ripe with indicia confirming that an allotment to College Park should be deemed an allotment to the Atlanta Urbanized Area.^{65/} For example, College Park already receives twenty eight aural services from the Atlanta radio market; it adjoins the City of Atlanta (and Atlanta's airport) along its eastern boundary; and it demonstrates an overwhelming degree of interdependence with the Atlanta Urbanized Area. Significantly, only 1.3% of the proposed WHMA city grade signal would travel outside the urbanized area.

In contrast, Covington is located outside of the Atlanta Urbanized Area and serves as the seat of a largely non-urban county.^{66/} Whereas College Park adjoins Hartsfield Atlanta International Airport, Covington is located forty-five minutes from the facility.^{67/} Unlike College Park, Covington does not participate in the Atlanta area vehicle emission inspection program and

^{64/} *FM Priorities*, 90 FCC 2d at n. 8.

^{65/} See discussion *infra* at Section II.

^{66/} See *Exhibit B* (Rand McNally map depicting Atlanta Urbanized Area); *Exhibit E* (*Commercial Atlas* at 302).

^{67/} Compare *infra* note 14 with *Exhibit H* (Newton Covington Chamber of Commerce at <<http://www.citybreeze.com/newtoncc/>>).

is not served by MARTA.^{68/} While Covington currently has an AM radio station licensed to it, that facility does not operate at night and is not subject to local competition from another Covington facility.^{69/} Finally, and perhaps most importantly, Covington receives just sixteen radio stations in contrast to College Park's twenty-eight aural reception services.^{70/} As a result, Covington is in greater need for a radio station than College Park.^{71/}

The costs of the Covington Proposal are also less than those presented by the College Park Proposal. The former would necessitate a loss of service for roughly 49,000 persons.^{72/} In contrast, the College Park Proposal would create a service loss of almost 659,000 individuals. (Even the assuming the "poor substitute" of WHMA's proposed replacement channels, relocating that station would create a service loss of over 437,000 persons.) A grant of the College Park Proposal, therefore, would cause a much greater disruption in service as well as a more significant injury to the public's legitimate expectation of continued broadcast service.

Accordingly, the Covington Proposal would provide tangible public interest benefits: the allotment of the first FM service and first competitive service to a deserving community, as well as a significant gain in service. These significant advantages far outweigh the minimal gains that would result from a grant of the College Park Proposal, because such an action would serve to provide a twenty-ninth service to the abundantly well-served Atlanta Urbanized Area at the

^{68/} *Exhibit G* (Bell South telephone directory); *Exhibit B* (MARTA route map).

^{69/} *NPRM* at ¶ 3.

^{70/} *Exhibit A* (Cox Engineering Statement).

^{71/} See, e.g., *Ravenswood and Williamstown, West Virginia*, 7 FCC Rcd at ¶ 14.

^{72/} *Exhibit A* (Cox Engineering Statement).

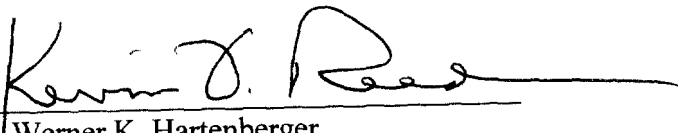
expense of existing service to 650,000 persons. The fair, equitable, efficient allocation of radio service, therefore, would be furthered by a grant of the Covington Proposal and the denial of the College Park Proposal.

Conclusion

The Commission in this proceeding has the opportunity to ensure the provision of a first local FM and first competitive service to the underserved community of Covington, Georgia. Alternatively, the Commission could permit WHMA to abandon its community of license and allow it to provide one more station to the crowded Atlanta radio market, at the expense of service losses to well over one-half million individuals in and around Anniston, Alabama. The public interest clearly favors the allocation of the first FM channel to Covington as well as the current arrangement of allotments in Anniston, Ashland and College Park. Accordingly, Cox respectfully urges the Commission to grant of the Covington Proposal and deny the College Park Proposal.

Respectfully submitted,

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August 31, 1998

CERTIFICATE OF SERVICE

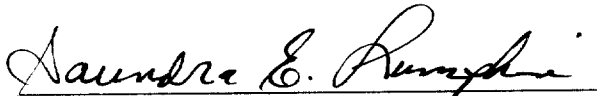
I, Saundra E. Lumpkin, hereby certify that a true and correct copy of the foregoing "Comments of Cox Radio, Inc." was sent on this thirty-first day of August 1998, via first-class United States mail, postage pre-paid, to the following:

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